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In the Supreme Court of the United States

No. 72-468

OCTOBER TERM, 1972

SHATTERPROOF GLASS CORPORATION,
Petitioner,

vs.

GUARDIAN GLASS CO., INC., *et al.*,
Respondents.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

PETITIONER'S REPLY IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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Respondents miss the point of the petition and make several misstatements of fact which should be corrected.

If there were an order for pre-trial briefs thirty days before trial as respondents contend, then it should be made clear that respondents did *not* comply with that order. Respondents filed their pre-trial brief twelve days before trial, not thirty days before trial.

Respondents argue that petitioner did not object to the "order" for pre-trial briefs. The controlling fact is that petitioner did not agree or consent to any such procedure.

Respondents' characterization of the contents of its secret pre-trial brief is out of order (respondents' brief, page 6). That brief is not part of the record in this case.

Petitioner made timely objection to the ex parte receipt of the pre-trial brief in its motion for a new trial, FRCP 59(b).

The wrong here is a denial of due process. Respondents submitted an ex parte communication to the trial court which petitioner did not see until weeks after the trial was over, such submission having been without petitioner's knowledge and without petitioner's agreement. Particularly in view of the strictures of *Blonder-Tongue Laboratories Inc. v. University of Illinois Foundation*, 402 U.S. 313 (1971), it would seem that this matter is of substantial public interest and should be dealt with by this court.

The Honorable Court is respectfully requested to grant the petition.

Respectfully submitted,

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